Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Federal-State Joint Board on Universal Service	CC Docket No. 96-45

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES ON STATE RATE REVIEW PROCESS

I. INTRODUCTION

The National Association of State Utility Consumer Advocates ("NASUCA")[1] submits this reply to various of the comments on the Notice of Proposed Rulemaking concerning the state rate review mechanism for non-rural carriers created by the October 27, 2003 Order on Remand (FCC 03-249) in this proceeding.[2] The comments filed by certain of the non-rural carriers err in varying degrees in insisting that the Federal Communications Commission ("Commission") must eliminate implicit intrastate universal service support, and in other respects, as described herein.

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[1] NASUCA is an association of 44 consumer advocates in 42 states and the District of Columbia. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

[2] Comments were filed by BellSouth Corporation ("BellSouth"); Iowa Utilities Board ("IUB"); New York State Department of Public Service ("NYDPS"); Pennsylvania Public Utilities Commission ("PaPUC"); Qwest Commuincations International Inc. ("Qwest"); SBC Communications Inc. ("SBC"); the Verizon telephone companies ("Verizon"); and Vermont Public Service Board ("VtPSB").

In the Order on Remand, the Commission decided issues raised in the Recommended Decision of the Federal-State Joint Board on Universal Service ("Joint Board"), released October 16, 2002 ("Recommended Decision").[3] In the Recommended Decision, the Joint Board had responded to several issues referred by the Commission as a result of the Tenth Circuit Court of Appeals remand of the Commission's high-cost support mechanism for non-rural telephone companies.[4]

In the Order on Remand, *inter alia* the Commission adopted an "expanded certification process" for non-rural carrier interstate universal service support, in order to better ensure reasonable comparability between rural and urban rates. In this process, each state will "provide information to the Commission regarding the comparability of the rates in rural areas within the state to urban rates nationwide."[5] In order to assess the comparability of non-rural carriers' rural rates, the Commission adopted a benchmark rate that is set at the national urban average rate plus two standard deviations.[6] Currently, the national average rate is $23.38 and the benchmark rate would be $32.28.[7]

In the expanded certification process, if its rural rates fall within two standard deviations of the national average rate, the state will so certify and the rates will be presumed "reasonably comparable."[8] States whose rates are above the benchmark must

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[3] FCC 02J-2, 17 FCC Rcd 20716 (2002).

[4] *Qwest Corp. v. FCC*, 258 F.3d 1191 (Tenth Cir. 2001) ("*Qwest*").

[5] Order on Remand, ¶ 89.

[6] Id.; see also id., ¶ 80.

[7] Id., ¶ 80 and n. 309.

[8] Id., ¶ 90. A state can, however, put forward information to show that, despite the benchmark finding, its rural rates are nonetheless not reasonably comparable. Id. But the state must then come up with an action plan to produce comparability. Id.

provide rate data for rural residential consumers demonstrating the lack of comparability and detail a proposed course of action to address the failure to achieve comparability.[9] If a state does not follow the certification process, no high-cost funding will be provided to its non-rural carriers.[10]

It is important to remember, as the Commission explicitly holds, that the findings in the Order on Remand apply only to non-rural carriers.[11] Thus only non-rural carriers filed comments on the NPRM. Many of the statements made in those comments, however, appear intended to be generic to all local carriers. The Commission should, for now at least, maintain the bright line between support mechanisms for non-rural carriers -- the subject of this NPRM -- and those for rural carriers.[12]

II. THE COMMISSION SHOULD NOT REQUIRE STATES TO ELIMINATE IMPLICIT INTRASTATE SUPPORT OR ADOPT INDUCEMENTS FOR STATES TO ELIMINATE IMPLICIT INTRASTATE SUPPORT.

The Commission asked many questions about how it should act to require or induce states to eliminate implicit universal service support in intrastate rates.[13] Further, the Commission proposed that "a state that has not [adopted explicit intrastate support mechanisms] cannot be deemed to have taken all reasonably possible steps to support rate

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[9] Id. A state can put also forward information to show that, despite the benchmark finding, its rural rates are reasonably comparable to the urban rates. Id.

[10] Id., ¶ 92.

[11] Entry on Remand, ¶ 1.

[12] This is because of the fundamental differences between non-rural carriers and rural carriers. See "The Rural Difference," Rural Task Force White Paper 2 (January 2000) (available at http://www.wutc.wa.gov/rtf); see also Fourteenth Report and Order, ¶ 17.

[13] Id., ¶¶ 126-132.

comparability within the state."[14] SBC's comments focus exclusively on those questions; others' comments also address these issues.

In its initial comments, NASUCA explained that there is no directive in 47 U.S.C. 254 that states adopt implicit universal service support mechanisms.[15] The Act expresses a clear preference for explicit *interstate* support,[16] but omits "explicitness" from the list of characteristics sought for *intrastate* rates.[17] As VtPSB states, "There is no statutory mandate to induce states to 'reform' their rate designs by making them conform to the Commission's ideas about the areas where rates should be high or low, or the kinds of customers whose local rates should be reduced."[18] Taking VtPSB's statement a step further, neither is there a statutory mandate about the kinds of customers whose local rates should be increased.

Thus Verizon's argument that states must show that they have '"rebalanced' business and residential rates … to remove any implicit subsidies"[19] finds no support in the Act. Interestingly, Verizon opposes using universal service funds "to promote policies that are unrelated to the specific purposes Congress specified in the Act...." including "to further 'encourage' states to reform intrastate universal service programs or to 'rebalance' local business and residential rates...."[20]

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[14] Id., ¶ 119.

[15] NASUCA Initial Comments at 12; see also NYDPS at 2.

[16] 47 U.S.C. § 254(e).

[17] 47 U.S.C. § 254(b)(5), (f).

[18] VtPSB at 29; see also NYDPS at 3-4.

[19] Verizon at 2; see also id. at 3, 4.

[20] Id. at 2; see also id. at 8.

Despite this lack of support in the statute, SBC spends its comments attempting to argue that despite the fact that although explicitness is explicitly omitted from the list of characteristics desired for intrastate universal service support programs, and explicitly *included* in the characteristics desired for interstate support programs, the Act nonetheless "implicitly" requires intrastate support to be explicit.

SBC's arguments are countered by the comments of VtPSB, which notes the central issue regarding implicit intrastate support:

> Those matters are within the reserved jurisdiction of the states. More basically, there is no single accepted method to define "implicit support flows." Nearly all statements that assert the existence of "implicit support" presuppose a particular allocation of joint and common costs. Since nearly all costs in telecommunications are joint and common, "implicit support" is largely in the eye of the beholder.[21]

Both the complexity and the variety of intrastate rate design also make federal attempts to influence states to eliminate implicit support mechanisms problematic. By contrast, the implicit support contained in interstate rates was found only in interstate access charges paid by interexchange carriers.[22]

SBC, BellSouth and Qwest argue that *Qwest* requires explicitness in intrastate support programs.[23] This is simply incorrect.[24] The RBOC comments do not cite any language from *Qwest* that requires explicit *intrastate* support.

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[21] VtPSB at 17. See also id. at 28, rejecting -- as did NASUCA -- the notion that the Commission should adopt inducements for states to adopt explicit support mechanisms.

[22] The joint and common cost issue identified by VtPSB should have played a larger role in the Commission's review of implicit interstate support.

[23] BellSouth at 6-7; Qwest at 9.

[24] See NYDPS at 3; VtPSB at 18.

III. THE PROPOSAL TO USE TOTAL INTRASTATE PER-LINE REVENUE AS THE PRIMARY MEASURE OF LOCAL RATES MUST BE MODIFIED.

VtPSB identifies a series of problems with establishing local rate comparability[25] and then argues that the Commission should adopt total intrastate revenues per line as a proxy for local exchange rates.[26] VtPSB asserts that the use of total intrastate revenues per line would solve all five of the problems in assessing rate comparability that it had identified.[27]

Unfortunately, VtPSB's simple solution would consider revenues that are not derived from the services intended to be supported by the federal support mechanism, and thus cannot be used for this purpose. For example, the use of total intrastate revenues per line would include revenues from vertical and other optional services, thus distorting the revenue that is supposed to be derived from the basic service package. Three-way calling is not part of the supported package, yet VtPSB's proposal would include revenues from three-way calling in addressing rural rate comparability.

VtPSB correctly points out that the use of total intrastate revenues "includes short-haul toll data, and thus corrects for local calling area size."[28] Yet intrastate revenue also includes "long-haul" intrastate toll data, which would be a significant problem in

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[25] VtPSB at 5-15.

[26] Id. at 15.

[27] Id.

[28] Id.

many states larger than Vermont.[29]

Modifying VtPSB's proposal to exclude revenues from vertical services and "long-haul" intrastate toll would make it more appropriate for use in this context. Whether that can be practicably done is another question.

IV. THE COMMISSION SHOULD NOT REQUIRE, BUT SHOULD PERMIT, ADDITIONAL STATES TO FILE INFORMATION.

The Commission asked whether it should require "all states" to provide additional data in the certification process.[30] The Commission requested comment on whether states should also be required to provide information on business rate data, rate data for non-rural areas served by non-rural carriers, and other rate data.[31]

The consensus of the comments appears to be that "to impose such an obligation on all states -- regardless of whether they receive federal universal service support, are seeking such support, or have certified that they have achieved rate comparability -- is overreaching."[32] Further, IUB raises some significant practical problems in requiring states to collect such information from all ETCs, including competitive and wireless ETCs whose rates are not tariffed.[33]

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[29] E.g., VtPSB's proposal would include intrastate revenues from all calling within New Mexico, a single-LATA state. Even if the revenues in question were limited to intraLATA toll revenues, in many states intraLATA calling goes beyond a reasonable expectation of local calling. In Ohio, for example, Columbus and Marietta are both in the Columbus LATA, even though they are 125 road miles apart.

[30] Id., ¶ 109.

[31] Id., ¶¶ 110-111.

[32] BellSouth at 4.

[33] IUB at [2].

V. THE COMMISSION SHOULD NOT DEVELOP DETAILED PROCEDURES FOR STATE REQUESTS FOR FURTHER ACTION.

The Commission sought comment on the specifics of the process by which states could apply for further federal support "based on a showing that federal and state action together are not sufficient to achieve reasonable comparability of basic service rates in rural, high-cost areas served by non-rural carriers…."[34] NASUCA noted that the number of states able to make such a showing should be limited, and argued against the Commission attempting to "clearly define" the process.[35]

BellSouth argues that the process should be clearly defined.[36] Apparently, this is because of BellSouth's concern that "the Commission must seek to avoid the problems currently plaguing the ETC designation process. The rubber-stamping of applications seeking further federal action should not be the norm."[37] NASUCA agrees with these concerns about the ETC process. Avoiding "rubber-stamping" depends more upon an explicit statement of Commission intention -- for instance that the state bears the burden of justification and that each state will be analyzed independently -- than upon any attempt to create detailed procedures to address those state-specific applications.

VI. CONCLUSION

The Commission should adopt NASUCA's recommendations set forth in the initial comments and these reply comments.

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[34] Order on Remand, ¶ 93.

[35] NASUCA at 3, 10; see Order on Remand, ¶ 95.

[36] BellSouth at 5.

[37] Id.

Respectfully submitted,

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